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THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Applebee's International, Inc.
v.
Societe Des Produits Nestle S.A., by
Assignment from The Stouffer Corporation

Opposition No. 91111517
to application Serial No. 75301628
filed on June 2, 1997

Motion for Reconsideration

J. David Wharton and Constance M. Jordan of Stinson
Morrison Hecker LLP for Applebee's International, Inc.

Robert V. Vickers of Vickers, Daniel, and Young for
Societe Des Produits Nestle S.A.

Before Simms, Cissel and Hairston, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

The Board, in a decision issued September 11, 2003,
sustained the opposition of Applebee's International,
Inc. to Societe Des Produits Nestle S.A.'s application to
register the mark SKILLET SENSATIONS for "frozen prepared

dinner mix consisting of meat, vegetables and potatoes with rice or pasta." The Board found that applicant's mark SKILLET SENSATIONS for the identified goods was likely to cause confusion with opposer's previously used mark SKILLET SENSATIONS for prepared entrees served in restaurants.

Applicant has filed a timely motion for reconsideration of the Board's decision. Applicant maintains that the Board's finding that opposer's prepared entrees served in restaurants and applicant's frozen prepared dinner mixes are related is not supported by the evidence of record and contrary to the recently decided case of *In re Coors*, ___ F.3d ___, 68 USPQ2d 1059 (Fed. Cir. 2003).

According to applicant, as a result of the Court's decision in Coors, "substantial evidence" is required in order to establish that the goods involved in this case are related. Applicant argues that the evidence of record does not rise to this level.

The Coors case involved the USPTO's refusal to register the mark BLUE MOON and design for beer in view of the registered mark BLUE MOON and design for restaurant services. In reversing the Board's decision upholding the refusal, the Court noted that the fact that

restaurants serve food and beverages is not enough to render food and beverages related to restaurants for purposes of determining likelihood of confusion. The Court reiterated the requirement set forth in *Jacobs v. International Foods Corp.*, 668 F.2d 1234, 212 USPQ 641 (CCPA 1982) that "something more" must be shown and held that the Board's finding that beer and restaurant services are related was not supported by "substantial evidence."

Unlike Coors, our likelihood of confusion determination in this case does not involve food and/or beverages on the one hand, and restaurant services per se, on the other hand. Rather, in this case, our likelihood of confusion determination involves frozen prepared dinner mixes sold in grocery stores and prepared entrees served in restaurants. Therefore, we are not persuaded that the "something more" requirement set forth in the Coors case is necessarily applicable herein.

Nonetheless, we remain convinced that the relevant duPont factors in this case favor a finding of likelihood of confusion.

It is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough

that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each party's good or services. In re Melville Corp., 18 USPQ2d 1386 (TTAB 1991) and cases cited therein.

Further, when both parties are using the identical mark, the relationship between the goods or services on which the parties use their marks need not be as great or as close as in the situation where the marks are not identical or substantially similar. See In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993)("[E]ven when goods or services are not competitive or intrinsically related, the use of identical marks can lead to an assumption that there is a common source"); In re Concordia International Forwarding Corp., 222 USPQ 355 (TTAB 1983).

In this case, the respective goods are quite similar in that they both are in the nature of meals or entrees,

and contain some of the same ingredients, namely, meat and vegetables.

Further, the record shows that the respective goods are relatively inexpensive, and the class of purchasers for the respective goods is the same, namely, the general public. This is a situation where essentially all of the purchasers of opposer's prepared entrees would be prospective consumers of applicant's frozen prepared dinner mixes. In this regard, we note that opposer is not a small operator of a handful of restaurants, but rather an expansive restaurant chain. Finally, as indicated in our decision, opposer's witness Mr. Steinkamp testified that opposer has sold some of its other products in grocery stores. Also, the record shows that other restaurants have sold certain of their products in grocery stores. While we recognize that opposer and the other restaurant companies have sold such products under their respective house marks, the evidence nonetheless demonstrates that consumers have been exposed to restaurants selling their products in grocery stores.

In sum, we remain convinced that the relevant duPont factors favor a finding of likelihood of confusion herein. Applicant's motion for reconsideration is accordingly denied.

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